

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

United States of America, )  
                            )  
Plaintiff,               )  
                            )  
vs.                       ) File No. 1:16-cr-123  
                            )  
Derick Colin Wilkinson, aka ) Appeal No. 17-1938  
Derrick Colin Wilkinson, )  
                            )  
Defendant.               )

TRANSCRIPT OF MOTIONS HEARING

Taken at  
United States Courthouse  
Bismarck, North Dakota  
December 8, 2016

BEFORE THE HONORABLE DANIEL L. HOVLAND  
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

MR. JONATHAN J. O'KONEK  
MS. DAWN DEITZ  
U.S. Attorney's Office  
220 E. Rosser Ave  
P. O. Box 699  
Bismarck, North Dakota 58502-0699

FOR THE UNITED STATES

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MS. MICHELLE ANN MONTEIRO  
MR. RYAN COSTELLO  
Assistant Federal Public Defenders  
Federal Plaza  
324 North Third Street, Suite 1  
Bismarck, North Dakota 58501

FOR THE DEFENDANT

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Certificate of Court Reporter - Page 41

1                             (The above-entitled matter came before the Court, The  
2                             Honorable Daniel L. Hovland, United States District Court  
3                             Judge, presiding, commencing at 9:00 a.m., Thursday,  
4                             December 8, 2016, in the United States Courthouse, Bismarck,  
5                             North Dakota. The following proceedings were had and made of  
6                             record in open court with the defendant and counsel present.)

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8                             THE COURT: We'll open the record in the case of  
9                             *United States versus Derick Wilkinson*. Here on behalf of the  
10                            federal government is Jonathan O'Konek from the U.S. Attorney's  
11                            Office and Dawn Deitz. Representing the defendant here are  
12                            Ryan Costello and Ms. Monteiro from the Federal Public  
13                            Defender's Office.

14                             This is scheduled as a hearing on some motions in  
15                             limine concerning what evidence is going to be permitted at  
16                             trial and what is not going to be permitted. I've reviewed the  
17                             government's motion in limine and their supplement. I never  
18                             saw a response from the Federal Public Defender's Office to the  
19                             government's motion in limine.

20                             MR. COSTELLO: Your Honor, we didn't file a written  
21                             response. We had planned on just making oral argument today  
22                             and offering an offer of proof as to the matter.

23                             THE COURT: All right. So let's talk about the  
24                             government's motion in limine, and is there anything -- I mean,  
25                             I'll give both attorneys an opportunity to make any other

1 arguments they wish to make, if you would like to do so at this  
2 time.

3 MR. O'KONEK: Nothing from the United States, Your  
4 Honor.

5 MR. COSTELLO: Your Honor, so as to the motions in  
6 limine the government has raised, they've obviously raised  
7 issues with introducing 404(b) and 404(a) evidence regarding  
8 the assaults on Ms. Betty Mulluk-Heart and Skylar Moran, and  
9 then 404(b) and 404(a) evidencing prohibiting admission of  
10 methamphetamine use on the part of the Mister -- the alleged  
11 victim, Michael White Thunder. And then there's two other  
12 issues with the 404(b) and 404(a) on Olivia Baker and  
13 consciousness of flight.

14 So as the government notes in its motion to introduce  
15 reverse 404(b) evidence, where we're admitting evidence about  
16 an alleged victim's character trait towards violence, the  
17 defendant has to have known about the incident prior to --  
18 prior to the alleged criminal conduct in this case. So  
19 specifically, the defense has subpoenaed the two -- two  
20 witnesses that -- the two alleged victims from Mister -- one --  
21 one proved victim and one alleged victim from Mr. Michael White  
22 Thunder's domestic violence incidents.

23 Betty -- Ms. Betty Mulluk-Heart, as an offer of  
24 proof, Your Honor, we would state that our client does not know  
25 anything about that specific incident or he did not learn --

1 know about it before the alleged criminal conduct in this case,  
2 so Ms. Mulluk-Heart is not allowed to testify as to specific  
3 instances of criminal conduct under 404(b). We do believe she  
4 can provide an opinion or a -- or testimony evidence as to  
5 opinion or reputation for violence of the alleged victim,  
6 Michael -- Mr. Michael White Thunder, if we called her to  
7 testify to that.

8 Now, 40 -- that's under 404(a). 404(a), Your Honor,  
9 doesn't require our client to have knowledge of the incident,  
10 so at this point, Your Honor, I think it's clear that if -- if  
11 we are allowed to call Ms. Betty Mulluk -- Mulluk-Heart, it  
12 would be limited -- to the limited scope that she could testify  
13 as to a reputation for violence or criminal or --

14 THE COURT: Well, the government agrees with that.

15 MR. COSTELLO: Yeah. Exactly, Your Honor, so I just  
16 want to clarify that.

17 THE COURT: It's not an issue of contention.

18 MR. COSTELLO: So -- and then specifically Ms. Skylar  
19 Moran, so we do have another offer of proof here. Our client  
20 did --

21 THE COURT: Well, let's talk about Betty  
22 Mulluk-Heart. I mean, is -- are you going to offer her for  
23 anything more than just an opinion on the defendant's -- or the  
24 victim's propensity for violence and domestic assault, or --

25 MR. COSTELLO: Nothing more than an opinion.

1                   THE COURT: Because I thought there was a -- I  
2 thought in the government's supplement, they provided an  
3 exhibit that was a disclosure from Ms. Monteiro that indicated  
4 that they were -- she was going to be talking about some other  
5 crazy incident at someone's house.

6                   MR. COSTELLO: Well, we had hoped -- we had thought  
7 at the time that she would be able to testify as to that, as to  
8 the incident in which Michael White Thunder assaulted her and  
9 kind of dragged her through -- around the house. But given our  
10 client doesn't have exact knowledge of that incident, we can't  
11 get into 404(b), so we would concede that part of it.

12                  THE COURT: Well, even if he had knowledge, I  
13 wouldn't let it in.

14                  MR. COSTELLO: Okay. Fair enough, Your Honor. So  
15 that we would concede it would just be as to her opinion as to  
16 the matter. We have spoken with her and provided a memorandum  
17 from when our investigator spoke with her to the government in  
18 which she does indicate that she does have an opinion that when  
19 he's -- Mr. Michael White Thunder is under the influence of  
20 either drugs or alcohol, he's a violent person or a mean  
21 person, meaning a violent person.

22                  THE COURT: And, Mr. O'Konek, do you have a problem  
23 with that?

24                  MR. O'KONEK: No, not just the opinion of Ms.  
25 Mulluk-Heart or Skylar Moran as to the fact that when he

1       drinks, he becomes violent. That's -- we don't object to that.

2                     THE COURT: Okay.

3                     MR. COSTELLO: So as to Ms. Skylar Moran, Your Honor,  
4       there the government had provided us a -- discovery on a couple  
5       incidents. The only --

6                     THE COURT: Skylar Moran is the victim's ex, right?

7                     MR. COSTELLO: The alleged victim's ex, yes, Your  
8       Honor. So Skylar Moran, our client -- as an offer of proof  
9       here, Mr. Wilkinson does know of the incident, the assault in  
10      which Mr. Michael White Thunder was convicted for -- convicted  
11      of assaulting Skylar Moran. His basis of the knowledge is he  
12      first heard about an incident between Skylar Moran and Michael  
13      White Thunder through Stephanie Moran. Stephanie Moran is Mr.  
14      Wilkinson's ex-girlfriend and the mother of his children --  
15      some of his children. She is also the first cousin of Skylar.  
16      He described them as sisters in the sense on the reservation,  
17      that the -- close relatives like that often tend to go by  
18      sisters.

19                     She had mentioned something offhand to him a while  
20      back about -- about Michael putting Skylar in the hospital.  
21      This information was then followed up by when -- Mr. Wilkinson  
22      has worked at the casino, at Pocket Aces, at the bar. He also  
23      worked the Player's Pub subsequently to that. When he -- when  
24      he was working at Pocket Aces at the casino, Loren Moran, who  
25      is Skylar Moran's father, who was also present the night -- or

1 who would -- not present during the assault between Michael  
2 White Thunder and Skylar Moran, but showed up afterwards, when  
3 law enforcement arrived, and Loren Moran was the individual  
4 that called law enforcement.

5 Mr. Wilkinson explained to me that Loren Moran was --  
6 that Mr. Wilkinson was serving Loren Moran and he told --  
7 talked to him about the incident, the fight between Skylar and  
8 Michael. He provided basic details, explaining that he -- that  
9 Michael had -- Michael had bit Skylar. Provided details there  
10 was some fight, and that he even pulled out his phone and  
11 showed some photos of Skylar from after the incident to Derick  
12 Wilkinson. Additionally, Mr. Wilkinson revealed that he  
13 thought someone had stabbed one of -- one of the other persons  
14 during that assault. He wasn't sure if he had gotten that from  
15 Loren Moran.

16 I would state, Your Honor, we -- independently we  
17 interviewed Bruce Freeman, who is an alleged witness in this  
18 case. I don't -- we have subpoenaed him to testify, although I  
19 don't know if we will call him. He -- Mr. Wilkinson was living  
20 at Mr. Freeman's residence, and when Mr. Wilkinson was later  
21 arrested by law enforcement, it was at Mr. Freeman's residence.  
22 Skylar Moran is the -- used to date Mr. Freeman, and  
23 Mr. Freeman related that Skylar Moran had explained to him what  
24 happened and that she had had to try to stab Michael White  
25 Thunder at one point. So I do believe that maybe at one point

1 in time Mr. Freeman relayed that to --

2 THE COURT: Skylar Moran had stabbed --

3 MR. COSTELLO: Had to stab Michael White Thunder in  
4 response at some point, so we do -- to the assault, so I do  
5 believe that maybe Mr. Freeman had revealed that to Mr.  
6 Wilkinson at some point or it had come up in general  
7 conversation, or if not, potentially Mr. Moran -- Loren Moran,  
8 Skylar's father, would have told her (sic). So we do believe  
9 that's a sufficient basis to indicate there was -- that he knew  
10 there was a fight, he knew she had been assaulted, he knew she  
11 had been bit, Your Honor. I have copies of exhibits the  
12 government --

13 THE COURT: But what -- how many trials are we going  
14 to have in this case --

15 MR. COSTELLO: Your Honor --

16 THE COURT: -- of how many separate incidents? I  
17 mean --

18 MR. COSTELLO: This is the only one we -- the  
19 specific instance we intend to get into. It wouldn't be a  
20 mini-trial, Your Honor. It's a conviction. He -- Mr. White --  
21 Michael White Thunder was convicted for this. He pled guilty.

22 THE COURT: Right.

23 MR. COSTELLO: It's established this incident  
24 happened.

25 THE COURT: Well, I'm not disputing that. He was

1 convicted.

2 MR. COSTELLO: And I have -- well, I'll provide  
3 photos to the Court of the incident so the Court can see it.  
4 It goes to Mr. Wilkinson's state of mind at that time of the  
5 alleged assault between -- with him and Mr. White Thunder. It  
6 goes to what his impression was of Mr. White Thunder.

7 We also -- the evidence in this case will bear out  
8 that there was some dispute or argument in the bar that night  
9 between Mr. Michael White Thunder and Mr. Wilkinson as to  
10 insults he was providing to Mr. Wilkinson's girlfriend, Miranda  
11 Fox. And then when inside the vehicle there was some level of  
12 an incident in which Mr. Michael White Thunder was getting out  
13 of control and getting assaultive and was swinging away at Ms.  
14 Fox's seat. We don't -- Ms. Fox --

15 THE COURT: Swinging away at her seat?

16 MR. COSTELLO: Yes, Your Honor. She remembers --  
17 from the testimony -- the statement she had provided to the  
18 government, she remembers just suddenly her seat being kicked  
19 and hit back and forth. And she doesn't remember if she got  
20 hit in the head by Mr. Michael White Thunder or if it hit -- if  
21 he smacked the head -- the head seat of the car into the back  
22 of her head. And then at that point Mr. Wilkinson turned  
23 around and started defending Ms. Fox and started hitting  
24 Mister --

25 THE COURT: Well, who initiated the contact?

1                   MR. COSTELLO: So Mr. Michael White Thunder would  
2 have initiated the contact, and then --

3                   THE COURT: With a seat or with a person?

4                   MR. COSTELLO: It's unclear, Your Honor. The  
5 testimony from what the government has given us is unclear as  
6 to whether it was the seat or a person. At that point in time  
7 Mr. Wilkinson then responds and hits Mister -- starts hitting  
8 Mr. White Thunder. So, Your Honor, I think that goes to the  
9 key element of our case. It's defense -- our defense is  
10 defense of another, that he's defending his girlfriend, Miranda  
11 Fox, as part of self-defense.

12                  THE COURT: Because her seat got kicked?

13                  MR. COSTELLO: Because Mr. White Thunder is drunk and  
14 intoxicated and swinging away at her. He doesn't know what  
15 Mr. White Thunder is going to -- is going to do at this point,  
16 if he's going to continue to try to hit her or if he is going  
17 to start getting aggress -- even more violent with either one  
18 of them. He's been making numerous comments throughout the  
19 night about Ms. Fox. Mr. Wilkinson then intervenes at that  
20 point to halt and stop and protect Ms. Fox from what was going  
21 on.

22                  I think, Your Honor, looking under 405(b) we're  
23 allowed to get into specific instances of a -- of a character  
24 trait or violent conduct if it's part of our defense. That is  
25 part of our defense, Your Honor. I do believe that the fact

1 that Mr. Wilkinson has no -- knew Mr. White Thunder assaulted a  
2 women on a previous occasion, an ex -- an ex-girlfriend of  
3 Mr. White Thunder's, that that goes to his state of mind at  
4 that point of time and what -- and what Mr. Wilkinson needed to  
5 do to protect himself, but more importantly to protect Miranda  
6 Fox at that point. It's 1:00 in the morning.

7 THE COURT: So why would he need to do anything to  
8 protect himself? He wasn't being swung at.

9 MR. COSTELLO: True, Your Honor. The focus of our  
10 defense is protection of Miranda Fox, but as the Court knows,  
11 anyone that -- when it comes down to an incident, any fight at  
12 the middle of the night, one doesn't know where that's going to  
13 go at that point, whether Mr. White Thunder will start  
14 assaulting him too or what.

15 I think at this point, Your Honor, it goes clearly to  
16 our claim of defense of another, and I think that should be  
17 admitted in, to allow Skylar Moran to testify briefly about  
18 that incident in which she was assaulted. And then if Mr.  
19 Wilkinson decides to testify, to testify as to what he knew  
20 about that incident. And, Your Honor, I have copies of the  
21 conviction and the photos from the incident with Ms. Moran I  
22 can admit to you now.

23 THE COURT: Well, what's the government's position on  
24 what they believe is admissible relative to this November 2015  
25 assault?

1                   MR. O'KONEK: Yes, Your Honor. At most what would be  
2 admissible would be if the defendant chose to testify, to  
3 explain what was going through his mind at the time that the  
4 victim was swinging at Miranda Fox. Although the defense has  
5 an opportunity to put on a defense for their client, specific  
6 instances of conduct coming through Skylar Moran is  
7 inappropriate, because what's important to their defense,  
8 therefore, is what the defendant knew at the time, that that  
9 was what was going through his mind, is that he's protecting  
10 his girlfriend from somebody he believes to have beat women up  
11 in the past.

12                  What Skylar Moran has to say about that is irrelevant  
13 because what we just heard from the defense is that he didn't  
14 hear it from Skylar Moran. He heard it through a chain of  
15 individuals. I believe Loren Moran was the end of that chain  
16 who actually talked to him about it.

17                  So our position is that the defendant can certainly  
18 speak to the reputation and opinion of the victim for being  
19 violent towards women, and at most he could explain what was  
20 going through his head about the incident involving Skylar  
21 Moran, what he learned, I believe -- I guess now from Loren  
22 Moran. The defense should not be allowed to contact -- or call  
23 Skylar Moran to testify about what happened because she didn't  
24 tell him anything.

25                  And also, the fact that he was convicted is overly

1 prejudicial under 403. It doesn't go to impeach the witness  
2 under 609 because it's not a felony conviction or a crime of  
3 honesty or dishonesty. And so we believe that at most the  
4 defense should only be allowed to have their client testify  
5 about what was going through his mind about this instance,  
6 without going into convictions or anything like that.

7 MR. COSTELLO: Your Honor, our response would be that  
8 we should be allowed to go into Skylar -- put Skylar Moran to  
9 testify about the incident, to explain that he did assault --  
10 that Michael White Thunder did assault her.

11 Looking at what -- the offer of proof we made, Mr.  
12 Wilkinson did know about the incident, and that was going  
13 through his mind at that time. Obviously Mr. Wilkinson --  
14 chooses to testify, he can testify to that fact too. He can  
15 testify to that, but at the same time we know that he knew  
16 about this incident.

17 Skylar Moran can come in and independently verify it.  
18 It goes to our ability to corroborate our own client's version  
19 of events if he chooses to testify. We have the ability to --  
20 to put on witnesses to corroborate our defense. We have a  
21 Constitutional right to do that. When it comes --

22 THE COURT: Well, subject to Rule 403 and any trial  
23 court's discretion not to turn the case into a charade and a  
24 parade of multiple other incidents.

25 MR. COSTELLO: Yes, Your Honor.

1                   THE COURT: It's crystal clear from Eighth Circuit  
2 case law that no judge has to allow a criminal case to evolve  
3 into a multitude of mini-trials about other incidents that  
4 occurred in this case on the reservation between Michael White  
5 Thunder and others. I mean, there's no doubt about it, that  
6 you can present evidence in the form of opinions from other  
7 witnesses like Skylar Moran and Betty Mulluk-Heart that  
8 Mr. White Thunder's -- what his reputation is in the community  
9 for violence towards women, but there's not an absolute  
10 Constitutional right to present every little incident that  
11 Mr. White Thunder has been involved in.

12                  MR. COSTELLO: And, Your Honor, we're not asking to  
13 present every little incident. We're asking to present one  
14 incident between Michael White Thunder and Skylar Moran that  
15 was clearly on Mr. Wilkinson's mind that presents -- that  
16 allows us to present a complete defense of -- defense of  
17 another, to explain this is -- the incident happened. Skylar  
18 Moran can come in and testify -- should be allowed to come in  
19 to testify to that incident and should be allowed to explain  
20 generally what happened.

21                  And then if Mr. Wilkinson decides to testify, he can  
22 explain that incident was on his mind. I think there's no  
23 doubt that he knew about this incident at this point, Your  
24 Honor. Obviously that goes to his state of mind at that time.  
25 He can testify to that, and Skylar Moran can testify as to

1 verify that incident.

2           If we had -- if we're limited to only presenting Mr.  
3 Wilkinson to testify to that, the jury could just dismiss that  
4 as a claim of a -- an independent and unreliable,  
5 uncorroborated claim that a -- of a self-serving claim of a  
6 defendant to try to get himself out of a -- out of -- out of  
7 criminal charges. We need the ability to present an  
8 independent witness to verify this incident happened. I think  
9 that's essential to this case. I think 404(b) and 405(b) allow  
10 that in this case.

11           And I think you're right, Your Honor. We don't get  
12 to go into every little incident that happened between Michael  
13 White Thunder and Skylar Moran. With Betty Mulluk-Heart we're  
14 limited to only opinion and reputation as to -- as to Michael  
15 White Thunder's --

16           THE COURT: So is it your intention -- do you think  
17 that you have a right to introduce the fact that there was a  
18 conviction arising out of this assault as well, even though  
19 that conviction doesn't fall within the realm of Rule 609?

20           MR. COSTELLO: Well, we can't impeach him as to that.  
21 We can introduce it as an independent evidence of the -- of  
22 violence, Your Honor. I do believe we do have a right to  
23 introduce the conviction. We don't necessarily get to impeach  
24 him on it, and our goal isn't necessarily to impeach  
25 Mr. Michael White Thunder under 609.

1                   THE COURT: But Rule 609 says that kind of  
2 conviction, that is not admissible.

3                   MR. COSTELLO: And we're focusing on impeachment  
4 there, Your Honor. I think we're using it to show that the  
5 incident happened and our client's state of mind. That's what  
6 we're using it to show under 404(b). We're not using --  
7 necessarily using it to impeach Mr. Michael White Thunder, to  
8 say that he is untruthful on the stand or to impeach his  
9 testimony as a witness or to impeach his ability to recall the  
10 incident under 609.

11                  Rather, we're using it under 404(b) and 405(b) to  
12 establish our client's state of mind, our -- what our client  
13 knew about Mr. Michael -- Michael White Thunder, and to  
14 establish that this incident did occur and that was on his mind  
15 and --

16                  THE COURT: So tell me what went on in this car. I  
17 mean, who -- who initiated the contact? What -- was this just  
18 a verbal altercation in the car and Mr. Wilkinson interpreted  
19 White Thunder as being disrespectful, so to speak, to his  
20 girlfriend and --

21                  MR. COSTELLO: No, Your Honor. Mr. Mike -- Michael  
22 White Thunder initiated the incident in the car.

23                  THE COURT: Well, what did he do?

24                  MR. COSTELLO: So he started hitting and -- hitting  
25 Ms. Fox's seat. He started swinging at her. Like I said, Your

1 Honor, from what the testimony we have, it's unclear  
2 necessarily as to whether he hit her in the head, himself, or  
3 he just hit the seat into her head. At this point she started  
4 going into a shell. She was terrified. She was -- she was  
5 having an anxiety -- an anxiety attack, Your Honor. I think  
6 her testimony -- her witness statement to the government  
7 explained at this point in time she was terrified about what  
8 was happening.

9                   Mr. Michael White Thunder was swinging at her and  
10 swung away at Mr. Wilkinson, and then Mr. Wilkinson responded  
11 and started hitting Mr. Mike -- Mr. White Thunder in the  
12 backseat of the car. Mr. White Thunder was sitting in the car.  
13 Ms. Fox was in the front driver's seat. Mr. Wilkinson was in  
14 the passenger front seat. Mr. White was in the backseat behind  
15 Ms. Fox and was swinging away at that point.

16                   There had been earlier, as you noted -- you kind of  
17 noted the idea of disrespectful comments that had been  
18 happening earlier throughout --

19                   THE COURT: Well, that happens all the time when  
20 people are drinking and -- and using street drugs and out  
21 partying.

22                   MR. COSTELLO: It happens frequently when that comes  
23 around, Your Honor.

24                   THE COURT: I've seen it thousands of times.

25                   MR. COSTELLO: Right, and if it was just that,

1       then -- Your Honor, then there wouldn't be necessarily any -- a  
2       legitimate claim of self-defense of another. But it's when the  
3       incident in the car -- when Michael White Thunder, who was  
4       incredibly inebriated, starts swinging away at Miranda Fox,  
5       then that starts initiating the contact. That initiates the  
6       assault. Then Mr. Wilkinson responds.

7                  The video surveillance shows that Mr. White Thunder  
8       was under -- substantially under the influence. He's a much  
9       larger individual than Mr. Wilkinson. He's swinging away at  
10      Miranda Fox, flailing at her, and then Mr. Wilkinson  
11      intervenes. I think that is what happened in the vehicle, Your  
12      Honor.

13                  THE COURT: So your client and Ms. Fox are certainly  
14       able to testify about what was going through their mind and  
15       what happened in the car, right?

16                  MR. COSTELLO: Yes, Your Honor, they're certainly  
17       able to testify to that.

18                  THE COURT: Anything more that you want to say,  
19       Mr. O'Konek?

20                  MR. O'KONEK: Your Honor, only that the defense is  
21       correct in that it -- that it probably will come out at trial  
22       that the testimony has in some way changed as the case has gone  
23       on. Miranda Fox has told law enforcement that he was swinging  
24       at her. In a jail phone call to the defendant she says she was  
25       hit in the head. So our position is we don't exactly know what

1 the witnesses will say at trial. Our belief is it is what the  
2 defendant -- or defense just said, that --

3 THE COURT: The testimony always evolves over the  
4 course of the case as people become more knowledgeable about  
5 what the disputed facts are.

6 MR. O'KONEK: Yes, Your Honor, but that -- that is  
7 it. I mean, we don't dispute what the defense just proffered  
8 as going to be the testimony by Miranda Fox. It's just that  
9 part of the self-defense issue is going to be a factual basis  
10 for the -- for the jury to make that decision, whether --  
11 number one, legally whether it does qualify as self-defense by  
12 the Court and factually whether it qualifies as self-defense,  
13 if it meets that threshold to even go to the jury, but that  
14 will be something we can take up at trial.

15 THE COURT: Well, with respect to the incident with  
16 Skylar Moran on November 19, 2015, it's my -- I'm going to  
17 defer ruling on whether I'm going to allow Ms. Moran to testify  
18 about the specifics of that incident. She certainly can take  
19 the stand, and I don't think the government has any objection  
20 to her testifying about Mr. White Thunder's reputation for  
21 violence, domestic violence, domestic assaults and particularly  
22 violence towards women. But at least at this stage I'm going  
23 to defer on the specifics of that incident until I hear the  
24 evidence play out at trial.

25 But I don't want anybody talking about the specifics

1 of that incident in opening statements. And if -- during the  
2 government's case in chief, if defense counsel believes that  
3 somehow the door has been opened and they should have a right  
4 to bring the specifics of this Skylar Moran incident into --  
5 into the trial, then I want to visit about that outside the  
6 presence of the jury before that ever happens. But my clear  
7 inclination from the review of Eighth Circuit case law is  
8 that -- that I would not allow the specific details of a  
9 November 19, 2015 assault on Skylar Moran to come into evidence  
10 at this trial.

11           The conviction, itself, is not going to come into  
12 evidence. It's violative of Rule 609, and I'm not going to  
13 have a mini-trial on the November 19, 2015 assault on Skylar  
14 Moran. What she can offer in this case is certainly opinions  
15 about White Thunder's propensities. But the details, the  
16 specifics, my inclination is not to allow that in, but I'll  
17 defer ruling until I see how the evidence plays out at trial.

18           And clearly with respect to Betty Mulluk-Heart, the  
19 defendant -- defense counsel has conceded that any specifics  
20 about White Thunder assaulting her are not admissible at trial.

21           And so let's talk about White Thunder's meth usage,  
22 if there's anything more that anyone wants to say about that.  
23 Certainly I think it's fair game for anyone to raise questions  
24 about what his level of intoxication or impairment was on the  
25 night of the incident, but I'll let both counsel tell me

1 what they -- what their thoughts are on evidence concerning  
2 Mr. White Thunder's meth usage.

3 MR. O'KONEK: Yes, Your Honor. We believe that, just  
4 as the Court said, it's proper for the defense to elicit on  
5 cross-examination whether at the time of the incident Mr. White  
6 Thunder was under any sort of substance that would impair his  
7 perception.

8 Our main objection is whether the defendant should be  
9 allowed to bring that up during his testimony, that he was  
10 aware of it. We don't believe through the evidence that the  
11 defendant was actually aware that the victim was on meth, and  
12 we are -- we were just concerned that that could come up at  
13 trial as a basis to support a self-defense claim, when there's  
14 a factual dispute as to whether or not he was even aware.

15 There's a jail phone call -- or, excuse me, an  
16 interview during -- a transport interview that Special Agent  
17 Bennett had conducted with the defendant wherein he explains  
18 after the incident he kind of flees to Bruce Freeman's house.  
19 At that point he talks with Bruce Freeman, and it seems that  
20 Bruce Freeman tells him that Michael White Thunder was on meth,  
21 only after the incident had occurred, so that is our main  
22 thing.

23 And then also we just don't want general character  
24 evidence to come in to say, well, Michael White Thunder was a  
25 meth head or that he has, you know, essentially a history of

1       meth usage. We believe it should be confined to  
2       cross-examination of the victim of his intoxication level at  
3       the time of the incident, and that is as far as we believe it  
4       should go.

5                   MR. COSTELLO: Your Honor, obviously, as you noted,  
6       the government noted, we should be allowed to cross-examine him  
7       on it at the time of the incident.

8                   THE COURT: Oh, absolutely.

9                   MR. COSTELLO: Yeah. We do believe, though, we  
10      should be allowed to go a little bit further as to his prior  
11      act -- a prior bad act to it. It's the same thing with -- we  
12      had with the -- the same issue with the assaults. We have to  
13      show our client knew the incident under *Bordeaux* and *Drapeau*.

14                  Looking at -- I'll provide an offer of proof as to  
15      what he knew about Mr. Michael White Thunder -- Mr. Michael  
16      White Thunder's methamphetamine use prior to the incident. He  
17      has known Mike White Thunder for a while. When he -- when Mr.  
18      Wilkinson -- when I say "he," Mr. Wilkinson has known White  
19      Thunder for a while. He -- Mr. Wilkinson used to date  
20      Stephanie Moran while Michael White Thunder was dating Skylar  
21      Moran.

22                  (Mr. Costello was asked by the court reporter to slow  
23      his speaking down.)

24                  MR. COSTELLO: So taking it a step back, Mr.  
25      Wilkinson used to date Stephanie Moran while Michael White

1 Thunder was dating Skylar Moran. They'd see each other at  
2 family events, barbecues. He'd see him out at the bar. Mr.  
3 Wilkinson has worked at the Player's Pub and the Pocket Aces  
4 for a while now. Michael White Thunder would come in very  
5 frequently to either of those establishments and drink.

6                   He's never seen -- Mr. Wilkinson has never seen  
7 Michael White Thunder actually use. However, he can tell --  
8 his impression is he could always tell that Mr. White Thunder  
9 used. That was based on his mannerisms and how he acted.  
10 Specifically, he'd be walking in an usual manner, very fast.  
11 His eyes would be wide open, like bloodshot. He -- his actions  
12 were unusual. He knows there's a substantial methamphetamine  
13 problem in New Town, so he's had some --

14                   THE COURT: Well, everybody knows that.

15                   MR. COSTELLO: Yes, Your Honor, and he's had some --  
16 he obviously has some access to individuals that use  
17 methamphetamine. Your Honor, a bartender at the bars, they  
18 would very -- would very likely know, have -- have a lot of --

19                   THE COURT: Well, he doesn't know that he's using  
20 methamphetamine. Maybe he's using some other street drug.

21                   MR. COSTELLO: And to an extent that's possible, Your  
22 Honor, but methamphetamine is the big one. It's a -- it's a --  
23 obviously it's -- yeah, the mannerisms that he describe  
24 Mr. White Thunder would engage in are mannerisms of someone  
25 that's stimulated and --

1                   THE COURT: Well, I guess my question is, you know,  
2       the door is open for asking Mr. White Thunder about whether he  
3       was using on this particular occasion of this assault. And you  
4       can certainly ask him a question if he's been a meth user prior  
5       to this evening and how long he's been a meth user. But  
6       getting into great details about how many people use meth in  
7       New Town and the specific details of his meth usage, the  
8       quantities that he uses, whether he shoots up or not, who he  
9       uses with, where he uses, I mean, I'm not going to turn this  
10      case into a meth trial.

11                  You can get in all you want about him and -- you  
12      know, in terms of his usage of meth on this particular evening.  
13      You can argue all you want in closing argument about, he's a  
14      doper, he's a dope head, he's a meth user, he's a meth freak.  
15      I mean, whether he used on one occasion or used on other  
16      occasions, he's still a meth user. So you're not going to be  
17      prejudiced, but -- about anything concerning his meth usage,  
18      but I'm not going to have Mr. Wilkinson or anyone else spend  
19      15, 20 minutes talking about White Thunder's meth usage. I  
20      mean, let's be reasonable about things.

21                  MR. COSTELLO: Okay.

22                  THE COURT: Everybody knows if he was using meth on  
23      the day of this assault, it's fair game.

24                  MR. COSTELLO: Understood, Your Honor.

25                  THE COURT: Anything else about that?

1 MR. O'KONEK: No, Your Honor.

2 THE COURT: Any questions about what's permissible?

3 I think you know -- all of you have been around long enough to  
4 know that what was going on on the evening of the incident is  
5 fair game for anybody on direct or cross.

6 Then we've got Olivia Baker's DUI conviction,  
7 September of 2016. She's not yet been convicted of that. Does  
8 the defendant plan to get into that, because --

9 MR. COSTELLO: Not --

10 THE COURT: -- I'm not going to allow it, but --

11 MR. COSTELLO: Your Honor, no, not really. The only  
12 concern had been if Ms. Baker had tried to make some claims  
13 that she's never had a drug or alcohol problem and never used.

14 THE COURT: Well, if she makes a claim that she's  
15 never had any problems related to drug or alcohol usage, then  
16 arguably that opens the door, but the government is probably  
17 not going to have her talk about that. But this occurred five  
18 months after this assault. She hasn't been convicted. She's  
19 presumed to be innocent. I can't think of a question that you  
20 would be permitted to ask her about that.

21 MR. COSTELLO: And that was our understanding, Your  
22 Honor, was really only if she or the government kind of opened  
23 the door under the issue. Then maybe we'd be allowed to ask  
24 some limited questions.

25 THE COURT: Well, if she gets on the stand and she

1 says, "I've never used street drugs and I've never used alcohol  
2 in my life," then maybe it opens the door to a question about  
3 what happened on September of 2016. But if she opens that  
4 door, I want to talk about what you're going to be permitted to  
5 ask her outside the presence of the jury before it ever occurs.

6 MR. COSTELLO: Yes, Your Honor.

7 THE COURT: But she's a witness in the government's  
8 case in chief?

9 MR. O'KONEK: Yes. Yes, Your Honor. She's the  
10 eyewitness.

11 THE COURT: She was out there at the time?

12 MR. O'KONEK: Yes, sir.

13 THE COURT: And was everybody under the influence  
14 that was out there at the time of this incident?

15 MR. O'KONEK: She was not under the influence at the  
16 time, and we actually have a body camera footage from her  
17 interview that can show that she was clear, coherent, and --

18 THE COURT: Oh, okay.

19 MR. O'KONEK: -- does not appear to be intoxicated.

20 THE COURT: But was everybody in the car under the  
21 influence?

22 MR. O'KONEK: Yes, Your Honor.

23 MR. COSTELLO: Yes, Your Honor.

24 THE COURT: Okay. So then somewhere in the middle  
25 lies the truth of what happened because nobody has really got a

1 good perception of what occurred.

2           Then there was a notice of intent to impeach filed by  
3 Ms. Monteiro concerning Michael White Thunder's three  
4 convictions, and does the government have any objection to  
5 that? I guess my only question was, is the criminal trespass  
6 charge an offense that's punishable by a year-plus in prison?  
7 Is it a felony conviction?

8           MR. O'KONEK: I believe it was, Your Honor. When we  
9 looked them up, I believe all three of them were felonies.

10          THE COURT: But were there any of those convictions  
11 that they intend to impeach -- or present as impeachment  
12 evidence, convictions that the government is challenging?

13          MR. O'KONEK: No. No, Your Honor.

14          THE COURT: Okay. So it's all fair game?

15          MR. O'KONEK: Those three, yes, Your Honor.

16          THE COURT: All right. Anything else?

17          MR. O'KONEK: The only issue would be just the  
18 consciousness of guilt --

19          THE COURT: Oh, okay.

20          MR. O'KONEK: -- request. I know speaking with the  
21 defense, they said they had an objection under 403, but just to  
22 put our point forward --

23          THE COURT: Objection under what?

24          MR. O'KONEK: 403, Your Honor.

25          THE COURT: Okay.

1                   MR. O'KONEK: Just -- just talking before the  
2 hearing, that's what they had mentioned. For our purposes the  
3 evidence is going to clearly point that after this incident  
4 occurred, the defendant, Miranda Fox, they drove away from the  
5 scene.

6                   During an interview with the defendant, law  
7 enforcement heard the defendant tell them that he ran away  
8 because he was scared he was going to get in trouble for the  
9 assault. He drives to Bruce Freeman's house. He's staying  
10 kind of in that house, but he finds a crawl space or almost  
11 like a basement area under -- underground of the house, and  
12 he's kind of crawling around in there, and law enforcement are  
13 trying to get him out to arrest him.

14                  And ultimately there was -- he's arrested later on,  
15 after he crawled out, but he doesn't have a shirt on, doesn't  
16 have shoes on, and has dirt -- one of the witnesses will say he  
17 had scratches on his back and dirt, showing that he was likely  
18 coming from the crawl space. So our perception of that is that  
19 that is clear consciousness of guilt. We would like to be --  
20 we'd like to get into that with several of our witnesses.

21                  When we do, we'd request that, you know, for the  
22 defendant's benefit the Court order -- give a limiting  
23 instruction basically explaining that this is not evidence to  
24 support guilt, it just demonstrates that -- it goes to the  
25 defendant's state of mind, that it is consciousness of guilt

1 evidence. It doesn't directly support that he did, in fact,  
2 commit the assault, but it's just consciousness of guilt  
3 evidence.

4 THE COURT: Well, there's an Eighth Circuit pattern  
5 closing instruction on that, I believe.

6 MR. O'KONEK: Yes, Your Honor, and I believe we've --  
7 we included that in our requested instructions, but just given  
8 that we're already having kind of this motion in limine  
9 hearing, we wanted to add that to not only give the defense  
10 notice, but to have the ability to present it in front of the  
11 Court prior to the start of the trial.

12 THE COURT: All right. Mr. Costello?

13 MR. COSTELLO: Your Honor, our position is the  
14 government hasn't sufficiently connected the inferences to  
15 state that this is consciousness of guilt. So the government  
16 talked about -- as the government just explained to the Court,  
17 Mr. Wilkinson is not wearing clothes -- he's not wearing shoes  
18 when he's outside, when he's arrested, when he's underneath in  
19 the crawl space. At that time, Your Honor, there -- it was  
20 cold outside. There had been snow on the ground. Mr.  
21 Wilkinson -- if Mr. Wilkinson is seeking to flee, he's not  
22 going to be fleeing in snow in bare feet and without a shirt,  
23 Your Honor.

24 He -- he and his girlfriend leave the scene at the  
25 alleged -- of the incident with Mr. Mike -- with Mr. White

1 Thunder that evening. It shows merely, Your Honor, that  
2 they're -- that they are trying to get out of --

3 THE COURT: They left the scene with Mr. White  
4 Thunder?

5 MR. COSTELLO: Oh, the -- at the bar where the  
6 alleged -- where the fight occurred, Your Honor, where the  
7 alleged crime occurred.

8 THE COURT: I thought the fight occurred in the car.

9 MR. COSTELLO: It occurred in the car and then  
10 outside of the car behind the Player's -- or behind the Legion  
11 bar in the downtown area, Your Honor. They left that scene to  
12 get away from Mr. White Thunder. They go home.

13 THE COURT: I thought he was unconscious.

14 MR. COSTELLO: I believe he was unconscious by the  
15 end of it, Your Honor, or at least appeared to be unconscious  
16 by the end of it. Law enforcement, they found him later, noted  
17 that he was unconscious at that time. When they leave, they  
18 don't -- they don't flee. They go -- they go home. They go  
19 home to Bruce Freeman's residence, where Mr. Wilkinson lives.  
20 They're not trying to get out. They're not trying to run from  
21 law enforcement or evade law enforcement.

22 When he's found -- you know, we don't know exactly as  
23 to what was going through Mr. Wilkinson's mind. Obviously he  
24 -- if he were to testify could potentially explain that, but if  
25 he's looking to flee, Your Honor --

1           THE COURT: Well, he's going to have to testify,  
2 isn't he, to explain self-defense in the case?

3           MR. COSTELLO: It's -- it generally is advisable, I  
4 guess, that, yeah, someone would testify as to that. It's not  
5 necessarily required, Your Honor, but it's something where  
6 we're at -- we're not sure as yet whether he will testify or  
7 not.

8           THE COURT: Okay.

9           MR. COSTELLO: Looking at that incident, if he's  
10 looking to flee and avoid consequences of something because  
11 he's feeling -- he believes he's guilty of a crime, why is he  
12 trying to flee not wearing shoes and a shirt? I mean, if he --

13           THE COURT: Well, isn't that for the jury to decide?

14           MR. COSTELLO: Your Honor, well, the government has  
15 to sufficiently show that -- has to sufficiently provide  
16 evidence of -- these inferences were met, that this is  
17 consciousness of guilt. It's not necessarily for the jury to  
18 decide if they haven't met their threshold requirement. If  
19 he's attempting to flee, Your Honor, if that's some level of  
20 consciousness of guilt, he would have gone home, packed up his  
21 bag, put on proper clothes to be out in winter, and then fled  
22 the scene of the -- fled the reservation.

23           THE COURT: Well, somebody that's sober might have  
24 done that, but people under the influence don't always make the  
25 soundest of decisions.

1                   MR. COSTELLO: So then if -- if that's the position,  
2 Your Honor, then alcohol is influencing his mind, not  
3 consciousness of guilt at all. Then I don't think that -- that  
4 would properly interrupt the chain that the government is  
5 trying to establish to show consciousness of guilt. At that  
6 point he's just not making proper decisions on what to do after  
7 that because alcohol is influencing him.

8                   Additionally, Your Honor, I think under 403 it's  
9 impermissible. It -- from what little probative value it has,  
10 it raises a substantial amount of unfair prejudice. It, as the  
11 government has noted, creates -- as the government and the  
12 Court has noted the issue of mini-trials, it would create a  
13 mini-trial as to whether he's guilty of a crime of obstruction  
14 of justice or fleeing or resisting law enforcement.

15                  It puts that issue on the table when we're dealing  
16 with what happened with Mr. White Thunder. It changes the  
17 entire jury's perspective on the matter of whether we have one  
18 or multiple crimes charged here. And it's a crime that he  
19 isn't charged with, Your Honor, whether he was resisting arrest  
20 or fleeing or obstructing --

21                  THE COURT: No, but isn't the jury entitled to see  
22 the whole scenario of events as they played out that evening  
23 from the time they were arguing in the bar until the time -- up  
24 until the time he was arrested?

25                  MR. COSTELLO: The jury has a right to see the -- a

1 certain -- the scenario as it -- and to an extent as it plays  
2 out. They don't have the right to see -- I mean, because that  
3 -- at what point in time does that -- does that chain of events  
4 stop? At what point is the jury limited from -- limited to  
5 what they're allowed to see?

6 I mean, at that -- if we're -- if we're going to  
7 allow that in, then we have to start considering what other  
8 incidents have bearing on the -- what decisions and the actions  
9 that were made that night and whether those are then properly  
10 allowed within the causal chain of events. I don't think the  
11 jury necessarily has a fundamental right to hear about  
12 consciousness of guilt due to an alleged flight. I don't think  
13 that fundamentally comes in for the jury to hear in this case.

14 THE COURT: Well, the Court has broad discretion in  
15 ruling on any evidentiary issues, and in the broad exercise of  
16 my discretion, I'm going to allow into evidence in this case  
17 everything that went on that evening from the -- what occurred  
18 in the bar or bars in New Town between the defendant and  
19 Mr. White Thunder and his girlfriend, Miranda Fox. I'm going  
20 to allow evidence concerning the incidents in the bar, in the  
21 car, outside the car, outside the bar, in the back alley behind  
22 the bar, and everything leading up to the arrest of Mr.  
23 Wilkinson. I think that's all fair game for the jury to  
24 understand what transpired that evening.

25 The jury can draw its own conclusions about

1       Mr. Wilkinson's conduct after he left the bar. Both attorneys  
2       can argue what they want to argue about whether it's evidence  
3       of consciousness of guilt or whether it's not. That's all for  
4       the jury to decide and for the attorneys to argue, but I think  
5       it's only fair that the jury hears the whole story that evening  
6       from start to finish. So that's the way I've consistently  
7       ruled in every criminal case that I've ever handled since 2002,  
8       and I'll continue to rule the same way. The jury is entitled  
9       to hear the evidence that's relevant to what transpired on the  
10      evening of the assault.

11                  Any other issues?

12                  And in terms of consciousness of guilt, if the  
13        government has requested a pattern instruction from the Eighth  
14        Circuit, which they apparently have, I'll give that  
15        instruction. I don't -- I'll wait and see how the evidence  
16        plays out as to whether I feel there's a need to give some  
17        limiting instruction about the arrest scenario, but more often  
18        than not there's not a need for such an instruction. But the  
19        Eighth Circuit pattern on consciousness of guilt I'd certainly  
20        give if warranted.

21                  Any other evidentiary issues?

22                  MR. O'KONEK: No, Your Honor.

23                  MR. COSTELLO: No, Your Honor.

24                  THE COURT: How many witnesses -- the government, I  
25        guess, is --

1                   MR. O'KONEK: We believe it will be around 15, Your  
2 Honor.

3                   THE COURT: Fifteen?

4                   MR. O'KONEK: Fifteen, maybe 16.

5                   THE COURT: And if you start with the evidence on  
6 Monday afternoon, when do you expect that you'll conclude? I  
7 suppose most of them are relatively short witnesses, but --

8                   MR. O'KONEK: Yes, Your Honor. We believe we'll be  
9 done by Tuesday at close of business.

10                  THE COURT: Okay. And you've got a couple of medical  
11 doctors. They're treating physicians, or was there surgery  
12 involved in this case?

13                  MR. O'KONEK: No surgery, Your Honor. The first one  
14 is an E.R. physician. He was the -- Dr. Jun is the individual  
15 who treated the defendant (sic) at the time of the incident.  
16 And then we have the radiologist -- that treated the victim.  
17 Excuse me. And then we have the radiologist who essentially  
18 can explain the broken bones, the fractures, and give a better  
19 estimate as to what the serious bodily injury was of the  
20 victim.

21                  THE COURT: And then we have a tribal enrollment  
22 director. Is Native American status going to be challenged, at  
23 issue in this case, or --

24                  MS. MONTEIRO: Your Honor, I'll be -- I'll be talking  
25 to my client this afternoon about that, and we'll let the

1 prosecution know.

2 THE COURT: Okay. And then apparently the jail  
3 administrator from Rugby, there was some phone calls that --

4 MR. O'KONEK: Yes, Your Honor.

5 THE COURT: Phone calls between whom?

6 MR. O'KONEK: The defendant and his girlfriend, the  
7 two people that were in the car other than the victim.

8 THE COURT: Okay. And what is -- is there just one  
9 conversation, or --

10 MR. O'KONEK: We have currently five that are marked.  
11 They're -- they're roughly around the August timeframe. August  
12 30, I believe, is the main one. We intend to only admit one  
13 during trial. Four would -- the other four are mainly for  
14 impeachment or bias, depending on what the witnesses say at  
15 trial. But there is the one -- the one that we intend to admit  
16 is a conversation between the defendant and his girlfriend  
17 where they talk about how she should just cry at trial to help  
18 him essentially win the case, and it's that discussion that we  
19 believe would go to any sort of motive to fabricate. The  
20 others are less involved than that, but they go to show bias,  
21 their -- their loving relationship, those sorts of things.

22 THE COURT: Okay. And then if the government rests  
23 at the end of Tuesday, Ms. Monteiro, Mr. Costello, how long do  
24 you think that your case would last?

25 MS. MONTEIRO: Perhaps Wednesday morning at the

1 longest.

2 THE COURT: Okay. A half day, or --

3 MR. COSTELLO: Right. We'd have possibly Skylar  
4 Moran and Betty Mulluk as a witness. We have Bruce Freeman on  
5 our list. It's unlikely we'd call them -- call him, but it's a  
6 possibility, and then perhaps Mr. Wilkinson.

7 THE COURT: Is there a video of any of this that  
8 occurred outside the bar or inside the bar?

9 MR. O'KONEK: Yes, Your Honor. There's a two-minute  
10 video that shows the victim and the defendant leaving the bar.  
11 The victim is essentially falling down, and the defendant picks  
12 him up and carries him, and then you go off screen and you  
13 don't know what happens.

14 But there's also two recorded interviews --  
15 audio-recorded interviews between law enforcement and the  
16 defendant that we would intend to play, I believe one edited  
17 down for things that aren't necessary. And we've discussed  
18 that with the defense, about making sure we can make edits that  
19 were appropriate. The first one, I believe, is about 35  
20 minutes, and the other one is about 40 minutes long.

21 THE COURT: Is there video outside the bar of what  
22 transpired in the car or outside the car?

23 MR. O'KONEK: No, Your Honor. All there is is the  
24 video that kind of shows the defendant picking the victim up  
25 when he kind of passes out -- or I guess not passes out. He

1 falls down because he's very drunk, and then they just kind of  
2 walk off screen, and that's the last you -- you see. And  
3 according to the defendant's interview with law enforcement,  
4 once he puts him in the vehicle, it's minutes later that the  
5 assault actually occurs, but none of that is on the video.

6 THE COURT: And does the government have an exhibit  
7 list that's been put together yet?

8 MR. O'KONEK: We have our exhibits put together. We  
9 intend on having the defense come over and inspect them  
10 tomorrow. And we will file them with the Court no later than  
11 noon tomorrow.

12 THE COURT: Okay. And we've got this meeting --  
13 pretrial meeting at 9 o'clock on Monday morning, and typically  
14 what I talk about is the preliminary jury instructions and then  
15 any other evidentiary issues. I think we've taken care of  
16 evidentiary issues, but were there any objections that anyone  
17 had filed to the preliminary instructions?

18 MR. O'KONEK: No, Your Honor.

19 MS. MONTEIRO: Your Honor, I have been on vacation.  
20 I looked at them, and my understanding was I had until the end  
21 of today to file any objections. I don't anticipate I will  
22 have any, but I'd --

23 THE COURT: Okay.

24 MS. MONTEIRO: -- like to just be able to review them  
25 this afternoon.

1           THE COURT: Yeah, that's fine.

2           MS. MONTEIRO: Thank you.

3           THE COURT: But does the government have any --

4           MR. O'KONEK: No, Your Honor. We submitted an e-mail  
5 to the Court saying we didn't have any objections.

6           THE COURT: Okay. I mean, there's -- they're pretty  
7 routine. It's -- the only issue is really if there's a problem  
8 with the elements of the crimes as they're listed in the  
9 preliminary instructions. But, yeah, if you could get back to  
10 us.

11           MS. MONTEIRO: I will.

12           THE COURT: And if you don't have any problems, I  
13 mean, we can get together -- well, we'll still get together at  
14 9 o'clock, I guess, and give everybody a chance to note any  
15 objections to the preliminary instructions, as well as talk  
16 about any other exhibits that might be controversial. Are  
17 there any that you envision now?

18           MR. COSTELLO: I don't envision any. We may have a  
19 couple of photograph exhibits to put together, and we'll get  
20 that by tomorrow as well.

21           THE COURT: All right. Thank you. We'll stand  
22 adjourned then.

23           (Proceedings concluded at 9:51 a.m., the same day.)  
24           - - - - -  
25

1                           CERTIFICATE OF COURT REPORTER  
2

3                           I, Sandra E. Ehrmantraut, a Certified Realtime  
4                           Reporter,

5                           DO HEREBY CERTIFY that I recorded in shorthand the  
6                           foregoing proceedings had and made of record at the time and  
7                           place hereinbefore indicated.

8                           I DO HEREBY FURTHER CERTIFY that the foregoing  
9                           typewritten pages contain an accurate transcript of my  
10                          shorthand notes then and there taken.

11                          Dated: May 15, 2017

12                          /s/ Sandra E. Ehrmantraut  
13                          Certified Realtime Reporter

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